IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.14385 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT CANCER AND RESEARCH INSTITUTE - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR SI NANAVATI, SR. ADVOCATE, for NANAVATI & NANAVATI for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 23/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition primarily challenges order dated 24th August, 2004 (Annexure-I) made by the Deputy

Director General (M), Directorate General of Health Services, New Delhi.

2. The petitioner, a society, registered under the provisions of the Societies Registration Act, 1860 has come into existence pursuant to a tripartite agreement between the Government of Gujarat, Gujarat Cancer Society, and the petitioner. The petitioner is running the hospital for treating patients suffering from cancer and related diseases, and in the process the petitioner also runs a research center. The petitioner is an institute recognized by the Ministry of Health and Family Welfare as a Regional Cancer Center.

3. The petitioner is managed by a governing body constituted of eight members, wherein four members are nominated by the State Government as provided by the Constitution of the petitioner-Society.

4. By virtue of Notification No.63/88-Customs dated 1st March, 1988 issued by Ministry of Finance, Department of Revenue, the petitioner becomes entitled to seek exemption in relation to equipments, apparatus and appliances including the spares thereof and accessories, but excluding consumable items, from payment of customs duty on importation in India. Accordingly, the petitioner made an application on 25th May, 1989 and was granted a certificate by the Director General of Health Services under forwarding letter dated 27th July, 1989 (Annexure-C). The said certificate is required to be reproduced as the controversy between the parties pertains to the terms of the said certificate. The certificate reads as under:

> “ **CERTIFICATE**
> Certified that Gujarat Cancer and Research Institute, M.P.Shah Cancer Hospital, Asarwa, Ahmedabad run by State Govt. of Gujarat falls in category (c) specified in the table annexed to Ministry of Finance (Department of Revenue)'s Notification No.63/88-Customs,1 dated 1-3-1988.
> Sd/-Dr.Mrs. I. Khemani Sharma
> Asstt. Director General (M)
> Dte. General of Health Services, New Delhi.

5. On the basis of the said certificate the petitioner sought benefit of Notification No.64/88-CUS dated 1st March, 1988 wherein the exemption from payment of customs duty was granted to specified category of hospital (charitable) importing hospital equipments subject to necessary certification from the Directorate General of Health Services. It is an accepted position that the petitioner had been granted such certificates viz. Customs Duty Exemption Certificates (CDECs) for import of various equipments. However, when the officers of respondent No.2 Directorate visited premises of the petitioner-Society some time in the year 2000-2001, after inspecting the records, the officers came to the conclusion that as post importation conditions of Notification No.64/88 had not been satisfied, the petitioner was not eligible to retain CDECs. The CDECs already issued to the petitioner were withdrawn and cancelled. This took place by virtue of communication dated 16th March, 2001. The

petitioner challenged the same by way of various communications made through the State Government along with a representation and a prayer to grant personal hearing. Though the said communication viz. 16th March, 2001 (Annexure-E) is also made a part of the prayer, the Court has not taken up the same for consideration as the same involves entering into questions of fact which can be decided only after leading of evidence and appreciating the evidence which would come on record.

6. However, the impugned order dated 24th August, 2004 is taken up for consideration for the reasons that follow hereinafter.

7. Mr.S.I. Nanavati, learned Senior Advocate appearing on behalf of the petitioner has been heard. Mr.Malkan appearing on behalf of the respondent authorities has also been heard and as recorded on 9th December, 2005 Mr.Malkan had prayed for time to seek instructions and impress

upon the respondent authorities to withdraw the impugned order. However, today it is stated by Mr.Malkan that he has not been able to communicate personally/get in touch with the concerned officers and hence, according to him, appropriate order may be passed.

8. When one goes through the impugned order dated 24th August, 2004, it is apparent that Paragraph Nos.2 and 3 deal with the default of the petitioner in relation to Notification No.64/88-CUS. Paragraph Nos.4, 5 and 6 also refer to the historical facts. Only in Paragraph No.7 of the impugned order reference to Notification No.63/88 appears for the first time. Again Paragraph Nos.8 and 9 pertain to the Memorandum of Association and the constitution of the governing body. The only paragraphs which effectively deal with the entitlement or otherwise under Notification No.63/88 are Paragraph Nos.10 and 12 (wrongly numbered). The said two paragraphs read as under:

“10. Whether a grant-in-aid institution falls with in the purview of institutions 'run' by the Govt., was examined by the Department of Revenue and Department of Legal Affairs wherein it was observed that “GCRI is a registered body under the Society Act and is run by an autonoumous body namely Gujarat Cancer Research Society. Thus merely because of the facts that the institute receives aid from the State and Central govt. and has their monies on the governing body, apparently it cannot be said to be an institute run by the Government.” Deptt of Legal Affairs, Ministry of Law has concurred with the views expressed by the Deptt of Revenue.

12. In view of the position and facts explained above, this Directorate is of the view that M/s. Gujarat Cancer and Research Institute, Ahmedabad is not entitled to avail the benefits under custom notification 63/88. Hence, the CDECs for 75 medical equipments as per annexure-1 imported vide one time categorization certificate No.Z-37017/2/89-MG, dated 27.7.89 under notification 63/88 are hereby withdrawn

and cancelled with immediate effect.

This issues with the approval of DGHS and Secretary (Health), Ministry of Health & Family Welfare, Government of India."

9. For appreciating whether the reasons advanced in the aforesaid part of the order are germane to the issue or not, it is necessary to reproduce Notification No.63/88-CUS which reads as under:

"

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
New Delhi, the 1st March, 1988

NOTIFICATION
No.63/88-CUSTOMS

GSR In exercise of the powers conferred by sub-section (I) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all equipment, apparatus and appliances, including spare parts and accessories thereof, but

excluding consumable items (hereinafter referred to as the hospital equipment), when imported into India, by any hospital specified in the Table annexed hereto, from-

(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act;

(i) the hospital produces a certificate from the Directorate General of Health Services to the Government of India or the Ministry of Health and Family Welfare in the Government of India to the effect that the said hospital falls in either of the categories specified in the said Table; and

(ii) the head of the hospital certifies that the hospital equipment in question are not being manufactured in India and are essential for running of maintenance of the hospital.

TABLE

All hospitals run by-

(a) the Central Government, a State Government, a Union territory Administration or a local authority or

(b) institutions established by or under any law for the time being in force, or

(c) Societies registered under any law for the time being in force relating to registration of societies, such societies being controlled by any of the authorities referred to in Clause (a).

EXPLANATION:- For the purpose of this notification, the expression Hospital includes any Institutions, Centre, Trust, Society, Association, Laboratory, Clinic and Maternity Home, which renders medical, surgical or diagnostic treatment.

Sd/-
(T. Jayaraman)
Under Secretary to the Government of India".

10. It is apparent that the only dispute raised by

the respondent authorities is whether the petitioner falls within the purview of an institution “run by the government”. However, as can be seen from the Table appearing in the Notification No.63/88, it is apparent that in the first instance there has to be a hospital which is run by any one of the three categories of persons specified in clauses (a) or (b) or (c).

Clause (a) talks of a hospital run by the Central Government, State Government, Union Territory Administration or a local authority;

Clause (b) refers to a hospital run by an institution established by or under any law for the time being in force; and

Clause (c) refers to hospital run by societies registered under any law for the time being in force relating to registration of societies, such societies being controlled by any of the

authorities referred to in Clause (a).

As can be seen from the language employed each of the clauses is separated by the use of the term “or”. This indicates that each clause operates on its own, independent of the other clauses. On a plain reading of the three clauses appearing in the Table, it is not possible to read requirements of any of the clauses overlapping each other.

11. It is an admitted fact that neither clause (a) nor clause (b) is applicable to the petitioner-Society. Therefore, the only question that survives is whether the petitioner fulfills the requisite conditions stipulated by clause (c).

12. Clause (c) requires in the first instance that a hospital should be run by a society, and such society must be registered under any law relating to registration of societies; the clause further provides that such society is

controlled by any of the authorities referred to in clause (a) viz. the Central Government, State Government, Union Territory Administration or a local authority. The clause nowhere envisages running of the hospital by any of the authorities referred to in clause (a). The requirement of clause (c) is that the society which runs the hospital should be controlled by any one of the societies mentioned in clause (a). The phrase “run by” appears at the outset and applies to all the three clauses, while the phrase “controlled by” appears only in the latter portion of clause (c). Meaning thereby, a hospital has to be run by a society and such society which runs a hospital has to be controlled by any one of the entities specified in clause (a). The two phrases are not interchangeable. Do not mean one and the same thing, and cannot be read to so mean.

13. When Paragraph No.10 of the impugned order is examined in light of the requirement of the notification, with special reference to the

conditions stipulated in clause (c) of the Table of notification, it is apparent that the respondent authority has committed an error when it states that “it cannot be said to be an institute run by the government”. The authority has unfortunately misread the requirement of clause (a) into clause (c). The only requirement is that a society which runs the hospital has to be controlled by any of the authorities referred to in clause (a). In the present case, it is not even disputed that the petitioner-Society is not being controlled by the State Government. Even in the affidavit-in-reply the same stand is adopted without appreciating the distinction between the two notifications and independent requirements of clauses (a) and (c) of Notification No.63/88. Another error is that the authorities have read the conditions for applicability of Notification No.64/88 as being relevant for determination of availability of benefit under Notification No.63/88.

14. It is necessary to reiterate that the certificate was issued to the petitioner-Society under clause (c) of the Table below Notification No.63/88 and hence, unless and until the respondent authorities are in a position to show that there is any violation qua the conditions prescribed in clause (c) of notification No.63/88, the benefit available under the said notification cannot be withdrawn for the purposes of alleged violation of post importation conditions under Notification No.64/88. There is no stipulation in Notification No.63/88 that the benefit available under the said provisions would stand withdrawn by virtue of violation of any of the conditions prescribed by Notification No.64/88.

15. In these circumstances, the impugned order dated 24th August, 2004 (Annexure-I) is hereby quashed and set aside.

16. The petition is accordingly allowed. Rule made

absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**